IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 793 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHOBABHAI ATABHAI SODHA
Versus
STATE OF GUJARAT

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Appearance :
MR BRAHMBHATT for MR HM PARIKH for Appellant.
MR PD BHATE, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/12/2007

ORAL JUDGMENT

1. This appeal has been filed by original accused no.1, who is convicted by learned Additional Sessions Judge, Nadiad by judgment dated 16-8-1997 rendered in Sessions Case No.156 of 1990, for having committed offence under Section 497 of the Indian Penal Code.

2. The appellant herein and one Jenabhai Galabbhai Sodha were both charged for having committed offences punishable under Section 376, and in the alternative under Sections 497, 498 read with 114 of the Indian Penal Code.

3. Complaint was lodged by the father of one Baluben. She was a married lady aged about 20 to 22 years of age. It was the case of the prosecution that the appellant with the help of original accused no.2 had, by giving false promises, enticed the lady on 30th March 1989 and stayed with her at several places and had extramarital intercourse and had thereby committed the said offences.

4. The learned Additional Sessions Judge by his impugned judgment acquitted original accused no.2. So far as the appellant is concerned, the learned Judge was of the opinion that though the appellant had sexual intercourse with the lady, the same was with her consent. He was, therefore, acquitted under Section 376 of the Indian Penal Code. However, since the lady was married, the appellant was convicted under Section 497 of the Indian Penal Code for having committed adultery. He was sentenced to R.I. for two years.

5. Learned advocate, Shri Brahmbhatt for the appellant at the outset raised a legal contention that learned Magistrate could not have taken cognizance of the complaint lodged by the father of the girl as per the provisions contained in Section 198 of the Criminal Procedure Code. It was pointed out that the complainant was the father of the girl, who had lodged the complaint before the Magistrate, who had thereafter called for police investigation.

6. Having heard learned advocate Shri Brahmbhatt for the appellant and learned APP, Shri Bhate for the State, on this limited issue I find that there is no dispute about the fact that the complaint was not lodged by the husband of Baluben.

7. Sub section (1) of Section 198 provides that no Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. It is not in dispute that Section 497 of the Indian Penal Code falls in Chapter XX. Sub section (2) of Section 198 further provides that for the purpose of Sub section (1) no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or 498 of the Code. As per the said proviso in absence of the husband, some person in care of the woman on his behalf at the time of commission of offence may with the leave of the Court make a complaint on his behalf.

8. Admittedly, no leave of the Court as envisaged in proviso to Sub section (2) of Section 198 of the Criminal Procedure Code was taken. Admittedly, the complaint was not filed by the husband of the girl. In that view of the matter, bar of taking cognizance of such a complaint under Sub section (1) of Section 198 would apply. Entire trial was, thus, vitiated. On this ground alone, appeal is required to be allowed.

9. In the result, appeal succeeds. Conviction of the appellant is set aside. Fine, if paid, to be refunded. Bail bonds cancelled.

(Akil Kureshi, J.)

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